

Missouri Medical Malpractice Joint Underwriting Association

Minutes for the Meeting of April 12, 2004

- Location:** Central Conference Room, Missouri Department of Insurance
Room 530, Truman State Office Building
Jefferson City, Missouri
- Time:** 9:00 a.m.
- Attending:** Bill Turley, Chairman (*via teleconference*) [Shelter Insurance
(Board) Companies/NAII]*
Don Ainsworth (*via teleconference*) [Safety National Casualty Corp/the
Alliance]
Paul Blume (*via teleconference*) [AIG/Unaffiliated Companies]
Craig Kjellberg (*via teleconference*) [State Farm Ins./Unaffiliated Cos.]
Karl Koch (*via teleconference*) [Savers Property & Casualty Ins. Co./the
Alliance]
Dave Monaghan [American Family Insurance/NAII]
Dennis Smith (*via teleconference*) [Missouri Employers Mutual/AIA]
Patty Williamson (*via teleconference*) [Uhlemeyer Services Inc./AIA]
- (MDI Staff)** Linda Bohrer, Director, Division of Market Regulation
Susan Schulte, Chief, Property & Casualty Section
Mark Doerner, Senior Counsel, P&C Section
- (Audience)** Keith Wenzel, Hendren & Andrae
Amy Hamacher, Missouri Insurance Coalition
Jim Vaccarino, (*via teleconference*) Marsh

The meeting began at approximately 9:00 a.m. with a discussion of attorney Keith Wenzel's due-diligence review of Marsh's suitability to function as the Board's primary service company. Keith's review included telephone discussions with regulators in three other states – Mississippi, New Hampshire and South Carolina – where Marsh operates a medical malpractice residual market operation, and a review of correspondence between the Missouri Department of Insurance (MDI) and another state (Nevada) on the same

* Material in brackets following the names of Board members indicate the insurance companies they work for and then the insurance industry trade groups which they are representing under Section 383.175, RSMo.

topic. All regulators responded with very favorable comments about Marsh. In particular, South Carolina reported Marsh had taken a program facing imminent demise and made it viable in a year and a half. The only caution voiced by one regulator (South Carolina's) was to make sure Board's contact person with Marsh is clearly identified. In addition, the MDI staff reported no outstanding issues between it and Marsh, and Keith noted a prior investigation of Marsh he had conducted for another client that had also been favorable. Based on this review, Keith recommended that the Board enter into a formal agreement with Marsh to serve as the primary service company for the JUA.

The Board then discussed Keith's analysis. The Board members indicated they were satisfied with the review Keith had conducted, and then voted unanimously to approve the hiring Marsh as the JUA's primary service company, but conditioned on the Board's ability to successfully negotiate the terms of a written agreement between Marsh and the JUA on key issues like Marsh's precise level of compensation. Don Ainsworth suggested that, as these negotiations progressed, that Marsh's standard contract language in the other state's where it provides similar services be considered as a basis for a final contract.

Having made the decision to use Marsh, the MDI staff was asked to contact Marsh to bring Jim Vaccarino into the teleconference, so that the Board could hear Marsh's opinions on which entity the Board should select as the independent actuary on the project. The Board gave consideration to all the actuarial firms that had responded to the Board's Invitation for Submissions. All were considered professional and capable of doing the job. Jim Vaccarino recommended Tillinghast, because, in his opinion, their private database on medical malpractice premiums, claims and losses was the best in the industry, and also because he had an excellent working relationship with members of the Tillinghast team. He recommended the Board specifically request Tom Hermes as the overseeing actuary, with Scott Dodge being the key liaison with the Board. The Board voted unanimously to hire Tillinghast, with the conditions recommended by Jim Vaccarino regarding specific personnel.

Next, the Board took up the Minutes of the March 25, 2004 Board meeting. Various members suggested minor changes to MDI staff. Subject to those changes, the minutes were approved.

Next the Board took up the election of officers. Although Board Chairman Turley had already been appointed to his position by the Director of MDI, the positions of Vice Chairman, Secretary and Treasurer mentioned in the Plan of Operations had yet to be filled. Don Ainsworth nominated Dennis Smith for the position of Vice Chairman; the nomination was approved by the Board by acclamation. Dave Monaghan was nominated for the position of Secretary and was also approved by acclamation. After some additional discussion, it was decided that the positions of Secretary and Treasurer could be combined, and then Dave Monaghan was approved to fill both positions.

The members then discussed the fact that a number of legislative proposals were circulating within the Capitol that might impact the Board's plans for the operation of the

JUA. One proposal that garnered specific mention would set up a mutual insurer with \$10 million in initial capitalization from the state. The Board asked Keith Wenzel to monitor the legislation and keep Marsh apprised of any developments.

Next, Jim Vaccarino asked the Board's guidance on a number of key topics that Marsh would face as it laid the foundation for the initial operations of the JUA. The two main issues were whether only occurrence policies would be written and how the Board would deal with the first year premium surcharge required under Section 383.165, RSMo.

Regarding the first issue, the general consensus was that the JUA would begin by offering only occurrence policies. Based on Chairman Turley's discussions with doctors, there is a demand in Missouri for occurrence policies, since these are not now available as new coverage.

As had been discussed at previous meetings, it is the interpretation some Board members that Section 383.160, RSMo does not preclude issuing claims-made policies. However, to remove any lingering doubt on the issue, Keith Wenzel suggested the Board consider a obtaining a court ruling on the matter, one way or the other. The Board authorized Keith to begin working on this.

Regarding the first-year premium surcharge issue, Chairman Turley again mentioned the possibility of requiring doctors and other health care providers to provide the JUA with a promissory note as payment of the surcharge. Keith Wenzel said he was working on a legal opinion on this matter. Jim Vaccarino indicated that Missouri's provision was similar to that in other states with statutes enacted in the 1970s, when there was a fear that it would be difficult to estimate medical malpractice premium charges accurately. As a safeguard, "stabilization reserve funds" were established, but ultimately, they did not prove to be very helpful or useful. For example, the Rhode Island JUA has collected \$34 million under its plan that can't be used and hasn't been returned to the doctors.

Chairman Turley reiterated his feeling that the surcharge may in fact prove to be a useful tool to help reduce the frequency of doctors moving from one carrier to another. Marsh pointed out that the existence of a surcharge held by the JUA might also be a tool for helping get providers to comply with loss control recommendations, and that it could count as an asset on the balance sheet.

Regarding the exact "form" of the payment of the surcharge, Jim Vaccarino said he had asked legal counsel to consider the option of a promissory note and was told such an approach would satisfy the statute. The Board asked Marsh to review this option, along with others, such as the payment of cash or via a letter of credit, and report back to the Board.

Regarding the suggestion made to Keith by South Carolina, the Board asked Jim Vaccarino who Marsh would use as its liaison with Missouri. Jim indicated that, initially, it would be either him or Jean Paul Rebillard, who would share equal responsibility, but that Mike Granacher, the senior employee at Marsh's Kansas City office, was being

considered as the long-term contact for the Missouri JUA, assuming this was acceptable to the Board.

Jim Vaccarino then asked the Board to consider several other matters:

- He recommended the Board consider allowing installment payments of premiums over \$10,000 on a 40/30/30 basis. The Board agreed.
- He also asked the Board to consider offering General Liability coverage to a practice group or corporate practice, to cover premises liability, etc., as an “incidental coverage,” as was the common practice in the voluntary market. He said the premiums and the associated losses were both low. The Board agreed.
- He also asked the Board to cover “professional corporations,” since many doctors have adopted this form of doing business. He recommended a shared limit between PC and doctor for a “solo” PC, and a separate limit for a group practice, with a premium of around 10% of that for the separate members combined. Chairman Turley pointed out that the existence of such coverage often helps the parties to litigation to reach a settlement, since a settlement against the PC only (and not the doctor) is not reported to the National Practitioners Data Bank. The coverage would also provide insurance for the vicarious liability of employees. The Board generally agreed with Jim’s suggestions; he in turn said he would present them something specific at the next meeting.
- He suggested that the JUA’s Plan of Operations track or cross-reference the statutory definition of a “health care provider” under Section 383.150, RSMo. Dennis Smith made a motion to make such a change to provision 14.1(1) of the Plan; Don Ainsworth seconded the motion, which then passed by voice vote without opposition. MDI staff said they would make the change.
- He asked whether the web site contemplated by the Board would provide only information or would also allow for the submission of applications. The Board agreed to an information-only site.
- He suggested that all JUA policies bear the “stamped” signature of the JUA’s secretary/treasurer. This suggestion caused the some Board members to inquire as to their liability coverage. While Chairman Turley pointed out the Board was covered by the JUA’s member-insurers under the Plan of Operation, Jim Vaccarino indicated Marsh would check the market to see if private coverage was available for the members.
- He asked whether mid-term quoting would be allowed. The consensus was this would be acceptable so long as the quotes were conducted after proper underwriting.

Finally, at Jim Vaccarino’s suggestion, the Board considered appointing an “executive committee” to handle the many issues that would arise during the start-up phase of the JUA’s operations. Chairman Turley volunteered himself and the two other elected officers to function in this capacity. The Board agreed without opposition to appoint Chairman Turley, Vice Chairman Smith and Secretary/Treasurer Monaghan as the Board’s executive committee.

Chairman Turley suggested that the members plan for the next meeting in mid-May. With that, the meeting was adjourned.